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FILED
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MAY 30 2007

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IN THE UTAH SUPREME COURT

CARMEN SNOW, SARAH MEIER, JEANETTA WILLIAMS, PAT RUSK, and LAMONT TYLER,

Challengers/Petitioners,

v.

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL,

Respondent.

CHALLENGE TO BALLOT TITLE OR, IN THE ALTERNATIVE, PETITION FOR AN EXTRAORDINARY WRIT, with incorporated Memorandum of Points and Authorities

Case No. 20070417

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I. INTRODUCTION

On November 6, 2007, the people of Utah will go to the polls to decide in a referendum whether House Bill 148 – which establishes the most expansive private-school voucher program in the nation ("Voucher Program") – shall become law. Based on the Legislature's subsequent enactment of House Bill 174, titled "Education Voucher Amendments," the uncontroversial purpose of which was to make several relatively minor amendments to H.B. 148, proponents of the Voucher Program – including prominent legislators and the Attorney General – have contended that the Voucher Program will be implemented regardless of the outcome of the referendum.

In the light of these contentions, and particularly the opinion supporting them issued by the Attorney General, a situation exists at the outset of the referendum campaign in which it is entirely unclear what the effect of the referendum will be – whether it will prevent the Voucher Program enacted by the Legislature from becoming law, or whether, to the contrary, the Voucher Program will be implemented no matter how the people vote.

Challengers/petitioners Carmen Snow, Sarah Meier, Jeanetta Williams, Pat Rusk, and Lamont Tyler ("petitioners"), in their capacity as sponsors of the successful H.B. 148 referendum petition, bring this action for the purpose of obtaining this Court's clarification of the relationship between H.B. 148 and H.B. 174 and, in turn, of the scope of the referendum. Only this Court can authoritatively resolve the legal uncertainty over whether a vote of the people against H.B. 148 will in fact accomplish the referendum's purpose of preventing the Voucher Program established by H.B. 148 from taking effect.

It is, moreover, equally clear that, if the Constitution's referendum process is to function properly, this Court's decision must come sooner rather than later. Over the course of the coming weeks and months, as the referendum campaign begins, both proponents and opponents of the Voucher Program will be making major strategic decisions involving the substantial investment of time, effort, and money, and they will begin to mobilize their supporters for the special election. Such strategic decisions and mobilization efforts – which are essential in the early stages of the campaign – cannot be made in a state of uncertainty about what the referendum, if successful, would accomplish. For this reason petitioners urge this Court, in the interest of Utah voters on both sides of the voucher issue, to address and decide this question now.

To that end, petitioners seek in this proceeding two alternative, yet complementary, forms of relief, either of which would remove the legal uncertainty surrounding the voucher referendum.

1. Pursuant to Utah Code § 20A-7-308(4), petitioners – as sponsors of the referendum petition – challenge the wording of the ballot title prepared by respondent Office of Legislative Research and General Counsel (hereinafter "LRGC"). In issuing its proposed ballot title pursuant to Utah Code § 20A-7-308(2) on May 15, 2007, LRGC – in its letter of transmittal to Lieutenant Governor Herbert – recognized the necessity of making clear to the electorate the effect the referendum would have on the Voucher Program, including the amendatory provisions of H.B. 174. Rather than providing such clarification in the ballot title, however, LRGC stated that it would address the issue later

– in the "impartial analysis" that it is required under Utah Code § 20A-7-703 to prepare, no later than August 20, for inclusion in the voter information pamphlet.

LRGC's failure to draft a ballot title that clearly answers this question has the consequence of postponing clarification until long after it is needed. And, more to the legal point at issue, LRGC's proposed ballot title fails adequately to "summariz[e] the contents of the measure" as it is required to do, Utah Code § 20A-7-308(2)(a)(ii), because it leaves entirely open the central question of whether voting "against" the bill in the referendum will actually result in preventing the Voucher Program from taking effect. Indeed, even LRGC's assertion that this remains an open question that LRGC will address in the August 20 "impartial analysis" is, to say the least, disingenuous. As we explain immediately below, LRGC has given an answer to that question by incorporating into the Utah Code those provisions of H.B. 148 that are repeated in H.B. 174 as fully operative law, notwithstanding the forthcoming referendum.

Even if the ballot title provides a technically correct summary of the provisions of H.B. 148, it fails to tell voters what is at stake in the referendum – whether a vote "against" H.B. 148 would be a vote against the enactment and implementation of the Voucher Program created by that bill, or merely a vote against including public-school mitigation funds and certain other provisions in a Voucher Program that would be implemented regardless of the outcome of the referendum. Under these circumstances, LRGC's proposed ballot title can appropriately be described as "patently false," Utah Code § 20A-7-308(4)(b)(ii), and this Court has the authority to revise the wording of the ballot title to make clear to the electorate that the referendum will determine whether or

not the Voucher Program created by H.B. 148 (and amended by H.B. 174) shall take effect.

2. In the alternative, petitioners seek, pursuant to Utah R. Civ. P. 65B and Utah R. App. P. 19, an extraordinary writ in the nature of mandamus directed to LRGC to remedy an unlawful exercise of that agency's authority, as to which no other plain, speedy, and adequate remedy exists. The writ is not directed to the agency's wording of the ballot title, but to a different LRGC action that also goes to the question of whether a successful referendum against H.B. 148 will result in preventing the Voucher Program from taking effect.

In carrying out its statutory duty to "prepare the laws for publication" and to "determin[e] priority of any amendments, enactments, or repealers to the same code provisions that are passed by the Legislature," Utah Code § 36-12-12(2)(g), (3)(g), LRGC has, in the official Utah Code, designated only about half of the provisions of H.B. 148 as "subject to voter approval" – even though the referendum petition with respect to H.B. 148 has been declared sufficient, and "the law that is the subject of the petition does not take effect unless and until it is approved by a vote of the people . . . ." Utah Code § 20A-7-301(2). LRGC has incorporated the remaining provisions of H.B. 148 – those that were repeated in the amendatory enactment of H.B. 174, and which voucher proponents and the Attorney General have argued are sufficient in and of themselves to create a Voucher Program – into the Utah Code as in full force and effect, without any reference to the forthcoming referendum.

LRGC's incorporation of significant portions of H.B. 148 into the Utah Code notwithstanding the referendum on that bill constitutes an unlawful exercise of its authority, and the writ should therefore issue to correct LRGC's unlawful act – and thereby to clarify that the scope of the referendum is the Voucher Program as enacted by H.B. 148, and not merely those provisions of H.B. 148 that were not repeated in the H.B. 174 amendments.

II. PERSONS AFFECTED

Pursuant to Utah R. App. P. 19(b)(1), petitioners identify the following entities as having interests that might be substantially affected by the petition: State of Utah; Office of Legislative Research and General Counsel; Governor Jon M. Huntsman, Jr.; Lieutenant Governor Gary R. Herbert; Utah State Board of Education; and Utah voters.

III. ISSUES PRESENTED AND RELIEF SOUGHT

The following issues are presented by this Petition: (1) Whether the ballot title proposed by LRGC is patently false and should be revised to make clear that a vote against H.B. 148 will prevent the Voucher Program established by that bill (and amended by H.B. 174) from taking effect. (2) Whether LRGC exceeded its jurisdiction in incorporating into the Utah Code certain provisions of H.B. 148, notwithstanding the certification of a referendum against that bill.

IV. STATEMENT OF FACTS

On November 6, in the first statewide referendum held in Utah in over 30 years, Utahns will vote to approve or reject H.B. 148 (attached hereto as Exhibit 1), which would establish the most expansive private-school voucher program in the nation. There

is, however, uncertainty among the electorate, and even among state officials, over whether the November vote will actually determine whether the Voucher Program will be implemented in Utah. In the past two months, legislators and the Attorney General have publicly stated that a Voucher Program can and should be implemented immediately, despite the fact that H.B. 148 cannot "take effect" unless it is approved in the referendum. They take this position because shortly after the Governor signed H.B. 148 into law, another statute – H.B. 174, "Education Voucher Amendments" (attached hereto as Exhibit 2), which made certain minor amendments to H.B. 148 – was enacted.

Because the issues presented in this Petition depend on the relationship between H.B. 148 and H.B. 174, the relevant provisions of both bills are set forth in some detail below, followed by a review of the subsequent actions taken by LRGC that form the basis for this Petition.

A. H.B. 148, "Education Vouchers"

On February 2, 2007, the Utah House of Representatives passed H.B. 148, entitled "Education Vouchers," by a single vote (38-37). H.B. 148 was a carefully crafted compromise bill which marked the culmination of seven years of intense political debate over the concept of public funding for private-school education.[1] On February 9, H.B. 148 passed the Senate by a vote of 19-10. The bill was sent to the Governor on February 12, and he signed it that same day.[2]

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[1] Jennifer Toomer-Cook, House OKs School Vouchers, Deseret Morning News (Feb. 3, 2007).

[2] See H.B. 148 Bill Status/Votes, http://le.utah.gov/~2007/status/hbillsta/hb0148.htm (last visited May 29, 2007).

H.B. 148 establishes a statewide program of private-school vouchers called the "Parent Choice in Education Program" by adding eleven new sections, §§ 53A-1a-801 through 811 (attached hereto as Exhibit 3), to the Utah Code.[3] Under the Voucher Program, virtually any Utah student who wishes to attend a private school – sectarian or secular – would be eligible for a voucher to offset the cost of tuition and fees at that school. The only exception is for students whose families are not low-income and who were already attending private schools during the 2006-07 school year. H.B. 148 § 53A-1a-804(1)-(2) (Ex. 1, App. 3-4). Within thirteen years, all such ineligible students will have moved through the school system, so that all students statewide would be eligible. Vouchers would range in amount from $3,000 per year for students whose family income qualifies them for subsidized school lunches, down – on a graduated scale – to $500 for those whose family income exceeds 250% of that threshold. Vouchers for kindergarten students would be 55% of the otherwise applicable amount.

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[3] The eleven new Code sections enacted by H.B. 148 are:

- § 53A-1a-801, "Title"
- § 53A-1a-802, "Findings and Purpose"
- § 53A-1a-803, "Definitions"
- § 53A-1a-804, "Scholarship program created – Qualifications – Application"
- § 53A-1a-805, "Eligible private schools"
- § 53A-1a-806, "Scholarship payments"
- § 53A-1a-807, "Mitigation monies"
- § 53A-1a-808, "Board to make rules"
- § 53A-1a-809, "Enforcement and penalties"
- § 53A-1a-810, "Limitation on regulation of private schools"
- § 53A-1a-811, "Review by legislative auditor general"

(Ex. 1, App. 1-13).

The cost of the Voucher Program is estimated at $9.3 million the first year and $12.4 million the second year, rising to $48 million annually after thirteen years when all private-school students would be eligible to receive scholarships.[4] H.B. 148 appropriates $100,000 to the State Board of Education for the administration of the Voucher Program, H.B. 148 § 12 ("Appropriation"), and provides that the funds for scholarship payments are to be appropriated annually by the Legislature from the General Fund. H.B. 148 § 53A-1a-806(1)(b) (Ex. 1, App. 8). Accordingly, in a separate appropriations bill passed during the 2007 Legislative Session, the Legislature provided for the appropriation of $12.3 million from the General Fund "[t]o implement the provisions of Education Vouchers (House Bill 148, 2007 General Session)." S.B. 3, Appropriation Adjustments, Item 135 (attached hereto as Exhibit 4, App. 55).

Sectarian schools are not excluded from participation in the Voucher Program, and H.B. 148 does not prohibit participating schools from requiring scholarship students to profess specific religious beliefs or to engage in prayer and worship. Because of this, it has been argued that both H.B. 148 and previous voucher bills violate the Utah Constitution,[5] which provides that "[n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment," art. I, § 4, and prohibits "any appropriation for the direct

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[4] See H.B. 148 Fiscal Note, http://le.utah.gov/lfa/fnotes/2007/hb0148.fn.htm (last visited May 30, 2007); Nicole Stricker, Guv quietly signs school voucher bill, Salt Lake Tribune (Feb. 13, 2007).

[5] See, e.g., Celia R. Baker, School Boards Say Vouchers Are Not Legal, Salt Lake Tribune (Feb. 23, 2006).

support of any school or educational institution controlled by any religious organization." Art. X, § 9.

In an apparent effort to address concerns over the constitutionality of the Voucher Program, the "Findings and Purpose" section of H.B. 148, § 53A-1a-802 (Ex. 1, App. 2-3), includes provisions stating that "school-age children are the primary beneficiaries of the choice in education program authorized in this part, and any benefit to private schools, whether sectarian or secular, is indirect and incidental," id. § 53A-1a-802(3) (Ex. 1, App. 2), and that the Voucher Program is "enacted for the valid secular purpose of tailoring a child's education to that child's specific needs as determined by the parent" and is "neutral with respect to religion." Id. § 53A-1a-802(5)(a) & (b) (Ex. 1, App. 3).

H.B. 148 provides that the Voucher Program is to be administered by the State Board of Education ("State Board"). See id. § 53A-1a-803(1) (Ex. 1, App. 3) (defining "Board" as "State Board of Education"). A section of the bill titled "Enforcement and Penalties" gives the State Board the authority to investigate complaints and hold hearings about alleged violations of the program's requirements, and to take actions to remedy such violations, including denying a private school permission to enroll scholarship students, withholding scholarship payments, or requiring the repayment of scholarship payments fraudulently obtained. Id. § 53A-1a-809 (Ex. 1, App. 12-13).

Although H.B. 148 gives the State Board the authority and responsibility to oversee the Voucher Program, it also explicitly provides that "[n]othing in this part grants additional authority to any state agency or school district to regulate private schools

except as expressly set forth in this part." Id. § 53A-1a-810 (Ex. 1, App. 13) ("Limitation on regulation of private schools").

One particularly pertinent provision of H.B. 148 is its § 53A-1a-807 – titled "Mitigation monies" – which is designed to mitigate the financial impact of the Voucher Program on public schools. This provision allows school districts whose students transfer to private schools under the Voucher Program to retain those students in enrollment for five years following the student's transfer, or until the student would have graduated from high school, for purposes of the district's receipt of funds under the "minimum school program." An amount approximating the cost of the vouchers received by the transferring students would be deducted from the significantly greater amount paid to the school district under the minimum school program. Id. §§ 53A-1a-807(2), (3) & (4) (Ex. 1, App. 11-12).

Voucher proponents, including the bill's sponsor, made it clear that the mitigation provision in H.B. 148 reflected a political compromise that was necessary to ensure the bill's success after multiple failed voucher bills over the course of seven years. In January, before the bill was introduced in the Legislature, the Executive Director of Parents for Choice in Education, a pro-voucher group, was quoted as saying that the group would support H.B. 148 even though "[c]ertainly there are some compromises in there . . . like money going to school districts that are losing students to vouchers. . . ."[6] The bill's sponsor, Rep. Steve Urquhart, agreed that the mitigation provision was a

[6] Jennifer Toomer-Cook, Voucher bill, similar to last year's, may pass this year, Deseret Morning News (Jan. 19, 2007).

political compromise: "Why is it in there? Politics," he was quoted as telling the House Republican caucus when he distributed a draft version of the bill.[7]

Throughout the legislative debate on H.B. 148, supporters of the bill cited the mitigation provision to counter criticisms that the Voucher Program would harm public education. Near the end of the House floor debate on the bill, Rep. Urquhart commented that the mitigation provision was the reason why the debates had not focused on potential harm to public schools.[8] The President of the Senate, Sen. Valentine, also cited the mitigation provision as one of the reasons he was supporting the bill.[9]

After H.B. 148 passed the House and the Senate, it was widely understood that the mitigation provision had been key to the bill's success. The Salt Lake Tribune reported that the provision had "swayed some reluctant lawmakers" and had "likely enabled the bill's passage."[10] Rep. Urquhart, the bill's sponsor, also attributed H.B. 148's success in the Legislature to the mitigation provision. In an opinion column, Rep. Urquhart wrote

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[7] Id.

[8] See Floor Statement of Rep. Urquhart on H.B. 148, House Day 19 (Feb. 2, 2007) at 48-49 (Attached hereto as Exhibit 5, App. 107-08). The legislative floor debates for both H.B. 148 and H.B. 174 are available in audio form from the Utah Legislature's website. For the Court's convenience, petitioners have prepared transcripts of these debates, which are provided in the Appendix to this Petition, and citations to the debates are to those transcripts.

[9] Floor Statement of Sen. Pres. Valentine on H.B. 148, Senate Day 26 (Feb. 9, 2007) at 54 (Attached hereto as Exhibit 6, App. 164)

[10] Nicole Stricker, Utah Legislature Approves the Nation's Most Expansive School Voucher Program, Salt Lake Tribune (Feb. 9, 2007).

that "[s]everal of my undecided colleagues started to take courage when I publicly responded to accusations . . . that vouchers would financially harm public education."[11]

Finally, after the bill had passed the Legislature, Governor Huntsman's spokesman announced that the Governor would sign the bill, in part because it contained the mitigation provision: "Gov. Huntsman has said since he first ran for office that he would support a voucher plan so long as it held public education harmless and was means-tested. This bill meets that criteria."[12]

Because the House vote on H.B. 148 was expected to be extremely close, House Speaker Greg Curtis, who shepherded the bill through the House, announced before the bill was even introduced that the strategy was to prevent amendments, in order to avoid "death by a thousand paper cuts": "We'll probably say, 'That's the bill, vote it up or down.'"[13] Thus, after H.B. 148 reached the House floor, it was not amended in either chamber.

B. H.B. 174, "Education Voucher Amendments"

On February 16, four days after the Governor signed H.B. 148 into law, H.B. 174, titled "Education Voucher Amendments," was introduced in the House of Representatives. H.B. 174 is the bill that voucher proponents – supported by the Attorney General – are now touting as a "second voucher bill" which is sufficient,

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[11] Stephen H. Urquhart, The people have spoken, Salt Lake Tribune (Feb. 10, 2007).

[12] Tiffany Erickson and Lisa Riley Roche, Voucher plan gets go-ahead, Deseret Morning News (Feb. 10, 2007).

[13] Nicole Stricker, School vouchers: Backers putting pressure on undecided lawmakers, Salt Lake Tribune (Jan. 26, 2007).

standing alone, to implement a Voucher Program. But H.B. 174 was never intended to be a stand-alone voucher bill; its purpose was, rather, to make certain minor changes to H.B. 148. In total, H.B. 174 enacted seven changes to the Voucher Program. Because all of these changes were noncontroversial, and were seen as improvements to the already enacted Voucher Program, most of the legislators who opposed vouchers nonetheless voted in favor of H.B. 174.

H.B. 174 was sponsored by Rep. Brad Last, one of the lawmakers whose last-minute decision to vote for H.B. 148 provided its one-vote margin of victory in the House. In fact, Rep. Last voted against H.B 148 in the House Education Committee on January 30, but then voted for it on the House floor three days later, on February 2.[14] In discussing H.B. 174, Rep. Last emphasized that the bill contained only minor, uncontroversial amendments to the Voucher Program, and explained that he had refrained from proposing the changes as amendments to H.B. 148 only because the bill's margin of approval was so narrow and tenuous:

> I'm making some pretty minor changes to the (original) bill – doing it as a companion bill, really. . . . Instead of doing it to the original bill and derailing that, I wanted to make sure that the bill was through the House and the Senate, signed by the governor and then just make a few minor changes.[15]

When he introduced H.B. 174 on the House floor, Rep. Last again explained that it contained only minor amendments to H.B. 148:

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[14] Nicole Stricker, Vouchers pass a House test, Salt Lake Tribune (Feb. 3, 2007).

[15] Wendy Leonard and Tiffany Erickson, Dixie lawmaker seeks changes in new law on school vouchers, Desert Morning News (Feb. 20, 2007).

> First of all, let me just reaffirm my commitment to make this voucher program work, and these amendments are in no way intended to try and water down the voucher program, it's actually—I'm hoping that it helps improve it, and I have talked to the sponsor [of H.B. 148] about these and he's very supportive of what we're doing.
>
> And let me just say that because the new bill, the voucher bill, is not law yet, a lot of the language in this bill is underlined, but I am only changing a few words . . . .[16]

After explaining the provisions of the bill (which will be set forth infra), Rep. Last reiterated that he had spoken to H.B. 148's sponsor about the changes he wanted to make to H.B. 148 before the first bill was approved, but that he had decided not to seek amendments to H.B. 148 because of the risk that doing so would derail the bill:

> [T]hank all of you for not asking a lot of questions about this, I think what we're trying to do is fairly obvious, but let me make one comment. These changes were some changes that I wanted to make before we ever passed [H.B. 148], and I felt like it wasn't appropriate to try and amend that bill or add further confusion to that bill.
>
> I wanted it to get passed, I wanted it to be signed by the governor, although I had talked to the sponsor and others about these amendments before the bill even went through. So I will—I just want to throw that out and I'm sure we will come back and revisit this issue, but I think these items make the bill a little better and let's try to make this thing work. Thank you.[17]

In the Senate floor debate, Senator Bell reiterated Rep. Last's point that H.B. 174 contained changes that voucher supporters would have made to H.B. 148 itself, but for the political risk that they perceived in attempting to amend that bill: "I think that this

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[16] Floor Statement by Bill Sponsor Rep. Last on H.B. 174, House Day 40 (Feb. 23, 2007) at 5 (Attached hereto as Exhibit 7, App. 170).

[17] Id. at 14 (Ex. 7, App. 179).

bill keeps faith with the promises we made that [H.B. 148] was a very delicate compromise and for political reasons we couldn't amend it at that point."[18]

Rep. Last's claim that H.B. 174 contained only minor amendments to H.B. 148 is borne out by the language of the bill. H.B. 174's title is "Education Voucher Amendments," and the bill's description states that it "modifies" the Voucher Program. H.B. 174, General Description. The bill makes the following seven changes to H.B. 148:

- Clarifies that parents whose children participate in the Voucher Program must accept full financial responsibility for "costs associated with transportation," H.B. 174 § 53A-1a-804(5)(b) (Ex. 2, App. 16);
- Clarifies that participating private schools must administer tests that measure "the student's academic performance," rather than "the student's performance," id. § 53A-1a-805(1)(f)(i)(A) (Ex. 2, App. 17);
- Requires participating private schools to "employ or contract with teachers who have completed a criminal background check," id. § 53A-1a-805(1)(g) (Ex. 2, App. 17);
- Provides that a school "that encourages illegal conduct" is not eligible to enroll scholarship students under the Voucher Program, id. § 53A-1a-805(3)(c) (Ex. 2, App. 18);
- Adds the words "and verified" in two places, so as to require the State Board to make rules as to how parental income shall be verified (rather than just "determined"), id. §§ 53A-1a-806(2)(b)(i), -808(1)(b) (Ex. 2, App. 20, 22-23);
- Moves the review of the Voucher Program by the legislative auditor general from 2013-14 to 2011-12, id. § 53A-1a-811 (Ex. 2, App. 23); and
- Appropriates another $100,000 to the State Board for the costs of administering the Voucher Program, H.B. 174, § 6 (Ex. 2, App. 23).[19]

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[18] Floor Statement by Sen. Bell on H.B. 174, Senate Day 44 (Feb. 27, 2007) at 6 (Attached hereto as Exhibit 8, App. 186).

[19] Compare H.B. 174 (Ex. 2, App. 14-23) with H.B. 148 (Ex. 1, App. 1-13); see also Floor Statement by Bill Sponsor Rep. Last on H.B. 174, House Day 40 (Feb. 23, 2007) at 3-9 (Ex. 7, App. 168-74) (explaining provisions of H.B. 174).

H.B. 174 also contains a "coordination clause" that provides:

> If this H.B. 174 and H.B. 148, Education Vouchers, both pass, it is the intent of the Legislature that the amendments to the sections in this bill supersede the amendments to the same numbered sections in H.B. 148 when the Office of Legislative Research and General Council prepares the Utah Code database for publication.

H.B. 174, § 7 (Ex. 2, App. 23).

Although H.B. 174 actually only "chang[ed] a few words," as Rep. Last put it, the bill is phrased as "enact[ing]," rather than "amending," five of the eleven sections of the Utah Code that were enacted by H.B. 148.[20] The reason why H.B. 174 was worded as "enacting," rather than "amending," these portions of the original voucher bill was, according to the bill's sponsor, that H.B. 148 had not yet been made a part of the Utah Code – see Utah Const. art. VI, § 25 ("no act shall take effect until sixty days after the adjournment of the session at which it passed") – and thus the Code sections relating to the Voucher Program did not yet exist to be amended. As Rep. Last explained in his floor statement introducing H.B. 174: "[B]ecause the new bill, the voucher bill [H.B. 148] is not law yet, a lot of the language in this bill [H.B. 174] is underlined, but I am

[20] H.B. 174 "enact[s]" the following Code sections previously enacted by H.B. 148: "Scholarship program created – Qualifications – Application" (§ 53A-1a-804); "Eligible private schools" (§ 53A-1a-805); "Scholarship payments" (§ 53A-1a-806); "Board to make rules" (§ 53A-1a-808); and "Review by legislative auditor general (§ 53A-1a-811). It does not "enact" or mention the six sections of H.B. 148 to which no changes were made: "Title" (§ 53A-1a-801), "Findings and purpose" (§ 53A-1a-802), "Definitions," (§ 53A-1a-803), "Mitigation monies," (§ 53A-1a-807), "Enforcement and penalties" (§ 53A-1a-809), and "Limitation on regulation of private schools" (§ 53A-1a-810). H.B. 174 (Ex. 2, App. 14-23).

only changing a few words."[21] Likewise, the unofficial website of the Utah Senate Majority explained that "HB 174 reenacted and included much of the language of the earlier bill [H.B. 148] because HB 148 was not yet on the books."[22]

Because the changes that were made by H.B. 174 were widely seen as improvements to H.B. 148, a large majority of the legislators who opposed vouchers voted for H.B. 174. For instance, Rep. LaWanna Shurtliff, who opposed H.B. 148, explained her vote for H.B. 174 by saying, "I have to support the bill, because if we're going to go ahead with vouchers lets [sic] give some money to the State Office of Education to try to do it."[23] Similarly, Rep. Sheryl Allen, who also voted against H.B. 148 but for H.B. 174, said of H.B. 174, "I appreciate this bill, which improves a bill, which a lot of us didn't like."[24] Likewise, Senator Romero, who opposed H.B. 148, voted for H.B. 174 because "although I don't support the bill originally passed, I believe these amendments are an important step in safeguarding taxpayer dollars and helping to insure better education programs in our state, and so I will be supporting them."[25]

It bears noting in this context that even H.B. 174's sponsor has admitted that the voucher opponents who voted for H.B. 174 would not have done so had they known that

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[21] Floor Statement by Rep. Last on H.B. 174, House Day 40 (Feb. 23, 2007) at 5 (Ex. 7, App. 170).

[22] The Senate Site, Unofficial Voice of the Utah Senate Majority, Voucher Debate: An Added Layer of Complexity (March 9, 2007), at http://senatesite.com/blog/2007/03/voucher-debate-added-layer-of.html.

[23] Floor Statement of Rep. Shurtliff on H.B. 174, House Day 40 (Feb. 23, 2007) at 12 (Ex. 7, App. 177).

[24] Floor Statement of Rep. Allen on H.B. 174, House Day 40 (Feb. 23, 2007) at 9 (Ex. 7, App. 174).

[25] Floor statement of Sen. Romero on H.B. 174, Senate Day 44 (Feb. 27, 2007) at 7 (Ex. 8, App. 187).

it would later be argued that the bill had independently enacted a voucher program that could stand even if H.B. 148 were challenged by referendum. Rep. Last noted that it was "ironic" that the "clean-up" bill he sponsored could foil the referendum.[26]

Due to the support from voucher opponents, H.B. 174 passed both houses of the Legislature by supermajorities – 54-11 in the House and 23-5 in the Senate.[27] The bill passed the House on February 23 and the Senate on February 28, and was signed by the Governor on March 6. At no point, from the time H.B. 174 was introduced until it was signed into law, was there ever any suggestion – in the Legislature or in the media – of the possibility that H.B. 174 could function as a stand-alone voucher bill independent of the bill it was enacted to amend.

C. The Referendum

Utah's Constitution guarantees its citizens the right to wield legislative power by enacting laws through the initiative process, and subjecting laws passed by the Legislature to disapproval via referendum. See Utah Const. art. VI § 1.[28]

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[26] Julie Rose, Voucher Loophole an "Ironic Twist" to Bill Sponsor, KCPW News (Mar. 12, 2007), at http://www.kcpw.org/article/3135.

[27] Strikingly, in the Senate all of the votes against H.B. 174 came from supporters of H.B. 148, while every Senator who had opposed the original voucher bill voted for H.B. 174. Compare Utah State Senate Vote Tabulation, 56th Legislature, 2007 General Session, H.B. 148, http://le.utah.gov/~2007/status/hbillsta/hb0148.002s.txt, with Utah State Senate Vote Tabulation, 56th Legislature, 2007 General Session, H.B. 174, http://le.utah.gov/~2007/status/hbillsta/hb0174.002s.txt.

[28] The constitutional provision allowing for referenda provides, in relevant part, as follows:

(1) The Legislative power of the State shall be vested in:
(a) a Senate and House of Representatives . . . ; and
(b) the people of the State of Utah as provided in Subsection (2).

On March 1, 2007, six individuals (including the petitioners in this case) representing Utahns for Public Schools, a coalition of organizations supporting public education, submitted a referendum application to the Lieutenant Governor, seeking a popular vote to disapprove H.B. 148. The purpose of the referendum, according to Utahns for Public Schools, was to "overturn a recently passed private school tuition voucher law" because of concerns over the Voucher Program's cost, experimental nature, lack of public support, "capacity to erode support for public schools and fragment society along religious, racial and ethnic, and socio-economic lines," and the lack of accountability in the program.[29]

After petitioners filed the referendum application, Utahns for Public Schools began a statewide campaign to collect the signatures required to put H.B. 148 to a vote of the people – 91,996 total signatures, or 10% of the total votes cast in the last gubernatorial election, statewide and in 15 of Utah's 29 counties, which had to be gathered within 40 days after the end of the legislative session at which the bill was

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> (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
>
> (A) initiate any desired legislation . . .
>
> (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

The statutes implementing the constitutional right to initiative and referendum are found in Utah Code §§ 20A-7-301 through -311.

[29] Press Release, Pro-Public Education Group Calls for Voter Referendum on Vouchers (March 2, 2007), http://www.utahnsforpublicschools.org/press%20release.aspx.

passed.[30] Utahns for Public Schools not only gathered the required number of signatures – the first time this had been done since 1974 – but set a record for a Utah referendum petition with 124,218 verified signatures. The petition met the required 10% of votes cast in the last gubernatorial election in 25 of Utah's 29 counties. The Lieutenant Governor certified the referendum application as "sufficient" on April 30.[31]

Under Utah law, when a referendum petition is declared "sufficient," "the law that is the subject of the petition does not take effect unless and until it is approved by a vote of the people." Utah Code § 20A-7-301(2).

On May 9, Governor Huntsman announced that the vote on the voucher referendum would be held on November 6, 2007.[32]

D. Voucher Proponents' Reliance on H.B. 174

On March 9, eight days after petitioners filed the H.B. 148 referendum application, and three days after the Governor signed H.B. 174 into law, pro-voucher legislators began to argue – for the first time – that the Voucher Program could be implemented under the authority of H.B. 174 alone, regardless of the outcome of the proposed referendum. Sen. Curt Bramble, who was the Senate sponsor of H.B. 148, was quoted as

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[30] See Utah Code §§ 20A-7-301(1)(a), -306(1); Initiatives/Referendums Currently in Circulation and 2007 Referendum Process, at http://elections.utah.gov/InitiativesCurrentlyinCirculation.htm (last visited May 21, 2007).

[31] Tiffany Erickson, School voucher opponents gather enough signatures for repeal vote, Deseret Morning News (Apr. 30, 2007).

[32] Nicole Stricker, November vote to decide school vouchers' fate, Salt Lake Tribune (May 10, 2007).

arguing that "[t]he heart and soul of the voucher (law) is also in [H.B.] 174,"[33] and that "[t]he second bill [H.B. 174] was passed with a veto-proof majority. . . . It's my understanding that that puts it beyond the reach of a referendum."[34] Thus, Bramble declared, "Short of a court-ordered injunction, vouchers are going to go forward."[35] On the same day, the unofficial website of the Utah Senate Majority echoed this contention, arguing that "even if voucher opponents can persuade a majority of voters to repeal HB 148, they will not be repealing Education vouchers."[36] The website went on to state that because the "Mitigation monies" section of H.B. 148 was not contained in H.B. 174, a vote to repeal H.B. 148 would actually result in "repealing the mitigation funding" while still allowing a Voucher Program to be implemented under the authority of H.B. 174.[37] And a week later the pro-voucher group Parents for Choice in Education released a letter written by attorney Clark Waddoups, which advanced the same argument.[38]

On March 27, Attorney General Mark Shurtleff joined the fray. He issued an informal opinion endorsing the argument that "H.B. 174 can stand alone and can be fully funded," and asserting that "the Legislature's primary purpose of creating a voucher

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[33] Tiffany Erickson, New fight over vouchers, Deseret Morning News (Mar. 9, 2007).

[34] Alan Choate, Anti-voucher drive may be dead, Daily Herald (March 9, 2007).

[35] Nicole Stricker and Matt Canham, Loophole may ensure vouchers go forward, Salt Lake Tribune (March 9, 2007).

[36] The Senate Site, Unofficial Voice of the Utah Senate Majority, Voucher Debate: An Added Layer of Complexity (March 9, 2007), at http://senatesite.com/blog/2007/03/voucher-debate-added-layer-of.html.

[37] Id.

[38] Letter from Clark Waddoups to Lieutenant Governor Gary Herbert, March 16, 2007, http://www.slcspin.com/wordpress/wp-content/uploads/2007/03/cwltrgaryherbert3-16-07.pdf.

program can still be effectuated" under H.B. 174.[39] The Attorney General did acknowledge, however, that there were "a few sticking points" – including the fact that "[t]here clearly is floor testimony from both the House and the Senate that will support that numerous legislators and senators voted for [H.B. 148] only because of the existence of the mitigation monies," and the possibility that the absence of various provisions from H.B. 174 could make the Voucher Program "more susceptible to an establishment clause challenge."[40] Nonetheless, the Attorney General concluded that "the likely effect of a referendum petition on H.B. 148 will serve only to deprive the public school system of the mitigation monies."[41]

The debate over whether H.B. 174 could stand alone grew more heated in May. On May 3, the State Board met to consider whether it should attempt to implement a Voucher Program based on the provisions in H.B. 174. The Board voted to "table further action . . . until it gets some answers to questions that have been posed in light of a successful referendum petition that has suspended implementation of House Bill 148,"[42] and to submit a list of twenty questions to the Attorney General.[43] Without answering the State Board's specific questions, Attorney General Shurtleff responded on May 11 with a

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[39] Utah Attorney General's Opinion No. 07-002 (March 27, 2007) at 2 (attached hereto as Exhibit 9, App. 201).

[40] Id. at 4-5 (Ex. 9, App. 203-04).

[41] Id. at 5 (Ex. 9, App. 204).

[42] State Board of Education Meeting Summary, Voucher Rule Held Until Board Gets Answers (May 3, 2007), http://www.usoe.k12.ut.us/board/summary/.

[43] Questions for Staff, AG, Division of Finance, Questions 3, 11 (May 3, 2007), http://www.usoe.k12.ut.us/board/summary/VoucherQuestions.pdf.

letter directing the State Board "to implement the voucher program through H.B. 174 immediately!"[44]

E. Ballot Title and Codification

The LRGC is statutorily charged with two duties that are relevant to this matter – drafting a ballot title for the referendum, and preparing the Utah Code for publication. LRGC's performance of these statutory duties forms the basis for this petition.

First, LRGC is directed by law to prepare an "impartial ballot title for the referendum summarizing the contents of the measure." Utah Code § 20A-7-308(2)(a)(ii). On May 15 LRGC submitted its proposed ballot title to Lieutenant Governor Herbert. In its letter of transmittal, LRGC acknowledged the debate over H.B. 174, but nonetheless proposed a ballot title that "does not address H.B. 174."[45] Instead, LRGC stated that it would "consider the provisions enacted by H.B. 174" in the "impartial analysis" which, under Utah law, it is to prepare no later than August 20 for inclusion in the voter information pamphlet. See Utah Code § 20A-7-703(1). LRGC's proposed ballot title reads as follows:

> Citizens' State Referendum Number 1
> Ballot Title
>
> In February 2007, the Utah Legislature passed H.B. 148, Education Vouchers. This bill will take effect only if approved by voters. The bill:
>
> - establishes a scholarship program for:
>   - qualifying school-age children who newly enroll in eligible private schools; and

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[44] Letter from Mark Shurtleff to Kim R. Burningham (May 11, 2007), http://www.sltrib.com/ci_5907582.

[45] Letter from M. Gay Taylor, General Counsel, LRGC, to The Honorable Gary R. Herbert (May 15, 2007) (attached hereto as Exhibit 10, App. 207).

- lower income school-age children who continue their enrollment in eligible private schools;

- provides for scholarships within that program of $500 to $3,000, depending on family size and income, increasing those scholarship amounts in future years; and
- allows school districts to retain some per-student funding for scholarship students who transfer to private schools.

Are you for or against H.B. 148 taking effect?[46]

Notwithstanding its decision not to address H.B. 174 in the ballot title, LRGC has in fact taken a position on H.B. 174. In carrying out its statutory duty to "prepare the laws for publication" and to "determin[e] priority of any amendments, enactments, or repealers to the same code provisions that are passed by the Legislature," Utah Code §§ 36-12-12(2)(g), (3)(g), LRGC has implicitly agreed that the referendum will affect only those sections of H.B. 148 not amended by H.B. 174. In the official Utah Code database prepared by LRGC and published on the internet,[47] only those six sections of the Utah Code enacted by H.B. 148 that were not repeated and amended by H.B. 174 are published with the qualification, "Subject to Voter Approval." The five code sections enacted by H.B. 148 and repeated in H.B. 174 are, by contrast, incorporated into the Code without any limitation that they are subject to the referendum vote. See Utah Code ch. 53A-1a (Ex. 3, App. 24-27).[48]

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[46] Id. at 3 (Ex. 10, App. 209).

[47] The internet version of the Utah Code is "an official publication of the Utah State Legislature." Utah Code – Statutes and Constitution, http://www.le.state.ut.us/~code/code.htm (last visited May 29, 2007).

[48] The sections of H.B. 148 that LRCG published with the qualification "subject to voter approval" are: Title (§ 53A-1a-801), Findings and Purpose (§ 53A-1a-802), Definitions (§ 53A-1a-803) Mitigation monies (§ 53A-1a-807), Enforcement and penalties (§ 53A-1a-809), and Limitation on regulation of private schools (§ 53A-1a-810). Those sections of H.B. 148 that are published without any such qualification are:

V. THIS COURT HAS THE AUTHORITY TO RESOLVE THE LEGAL UNCERTAINTY OVER THE SCOPE OF THE VOUCHER REFERENDUM BY REVISING THE BALLOT TITLE PROPOSED BY LRGC; OR, IN THE ALTERNATIVE, BY DETERMINING WHETHER LRGC EXCEEDED ITS JURISDICTION BY INCORPORATING INTO THE UTAH CODE THE PROVISIONS OF H.B. 148 THAT WERE REPEATED IN H.B. 174

Petitioners combine in this action two alternative yet complementary claims for relief, both of which squarely place before the Court the question of the voucher referendum's scope and effect. Granting relief either by revising the ballot title or by issuing an extraordinary writ is within the Court's authority.

A. The Ballot Title Is "Patently False" In Failing Accurately To Summarize The Contents Of The Referendum Measure And Should Therefore Be Revised

Petitioners' first claim for relief is brought under Utah Code § 20A-7-308(4)(a)(i), which provides that "[a]t least three of the sponsors of the [referendum] petition may, within 15 days of the date the lieutenant governor mails the ballot title, challenge the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court."

Under Utah law, LRGC is required to prepare a referendum ballot title that is "impartial" and that "summarize[es] the contents of the measure." Utah Code § 20A-7-308(2)(a)(ii). When a challenge to LRGC's ballot title is brought, this Court is to apply a presumption that the proposed title is such an impartial summary, id. § 20A-7-

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Scholarship program created – Qualifications – Application (§ 53A-1a-804), Eligible private schools (§ 53A-1a-805), Scholarship payments (§ 53A-1a-806), Board to make rules (§ 53A-1a-808), and Review by legislative auditor general (§ 53A-1a-811). See Utah Code § 53A (Ex. 3, App. 26-27).

308(4)(b)(i), but if the sponsors rebut that presumption by showing "clearly and convincingly" that the ballot title is "patently false or biased," id. § 20A-7-308(4)(b)(ii), the Court can revise the ballot title and certify to the Lieutenant Governor a title that meets the requirement of being an "impartial . . . summar[y] of the contents of the measure." Id. §§ 20A-7-308(4)(c)(iii), -308(2)(a)(ii).

The ballot title that LRGC has proposed cannot be said to be an impartial summary of the contents of the measure – and indeed can only be characterized as "patently false" – because it does not inform voters of the single, vital piece of information they need in order to determine how to vote on the referendum before them: whether voting "against" H.B. 148 will or will not result in preventing the Voucher Program from taking effect. A voter faced with LRGC's proposed ballot title would have no way of knowing whether a vote "against" H.B. 148 would result in the invalidation of the voucher law in Utah, as the sponsors of the referendum intended, or whether, as voucher proponents and the Attorney General have argued, such a vote would allow the Voucher Program to remain in effect under H.B. 174 but would strip the program of the "mitigation monies" intended to offset the program's financial impact on public schools.

And the problem is particularly acute where, as here, the ballot title LRGC has proposed cannot be reconciled with LRGC's determination, in incorporating into the Utah Code those provisions of H.B. 148 that were repeated in H.B. 174, that the Voucher Program has indeed become law notwithstanding the H.B. 148 referendum.

In the unique circumstances presented here, where referendum proponents and opponents and the various branches of the Utah government are in open, public

disagreement about the fundamental question of whether a referendum vote disapproving H.B. 148 would actually prevent the Voucher Program from taking effect, a ballot title that merely summarizes the technical provisions of H.B. 148 but fails to inform voters whether a vote against the bill will prevent those provisions from becoming law cannot be said to be an "impartial summary of the contents of the referendum."

This Court should, accordingly, exercise its authority under Utah Code § 20A-7-308(4) to revise the ballot title proposed by LRGC. Petitioners respectfully propose that the ballot title adopted by LRGC be revised to read as follows (with language added to LRGC's proposal underlined):

> In February 2007, the Utah Legislature passed H.B. 148, Education Vouchers. This bill – and a subsequent bill amending it, H.B. 174 – will take effect only if approved by voters. The bill:
>
> - establishes a scholarship program for:
>   - qualifying school-age children who newly enroll in eligible private schools; and
>   - lower income school-age children who continue their enrollment in eligible private schools;
> - provides for scholarships within that program of $500 to $3,000, depending on family size and income, increasing those scholarship amounts in future years; and
> - allows school districts to retain some per-student funding for scholarship students who transfer to private schools.
>
> Are you for or against H.B. 148 taking effect?[49]

[49] In order to highlight precisely our disagreement with LRGC's proposed ballot title, we have done no more than to add the language necessary to provide an accurate, impartial summary of what is at stake in the referendum, and have not attempted to undertake the additional minor editing that would be required to bring our revised ballot title within the statutory limit of 100 words fixed by Utah Code § 20A-7-308(2)(b).

B. In The Alternative, The Petition For An Extraordinary Writ In This Court Is Proper

1. LRGC Has Exceeded Its Jurisdiction In Incorporating H.B. 174 Into The Utah Code

Should this Court conclude that it lacks the authority to revise LRGC's proposed ballot title as petitioners request, it can nonetheless clarify the scope of the H.B. 148 referendum by granting petitioners' alternative request for an extraordinary writ in the nature of mandamus directed to LRGC, in connection with LRGC's incorporation of certain provisions of H.B. 148 into the Utah Code notwithstanding the forthcoming referendum.

Because the referendum petition on H.B. 148 was "sufficient," "the law that is the subject of the petition does not take effect unless and until it is approved by a vote of the people at a regular general election or a statewide special election." Utah Code § 20A-7-301(2). LRGC has a statutory duty to "enroll the legislation and prepare the laws for publication," Utah Code § 36-12-12(2)(g), and to "determin[e] priority of any amendments, enactments, or repealers to the same code provisions that are passed by the Legislature," id. § 36-12-12(3)(g). In preparing the Utah Code for publication, LRGC has violated both of these requirements: It has proceeded as if the Voucher Program established by H.B. 148 were already part of Utah law, and as if the referendum only challenged those provisions of H.B. 148 that were not repeated in H.B. 174.

Specifically, the Utah Code as prepared and published on the internet by LRGC identifies as "subject to voter approval" only those sections enacted by H.B. 148 that were not affected by the H.B. 174 amendments. By contrast, the Code as prepared by

LRGC identifies those sections of H.B. 148 that were repeated and amended in H.B. 174 as in full force and effect, without any qualification of being "subject to voter approval."[50]

2. No Other Plain, Speedy, Or Adequate Remedy Exists; And It Is Impractical Or Inappropriate To File The Petition For An Extraordinary Writ In The District Court

Unless this Court revises LRGC's proposed ballot title, it should entertain the petition for an extraordinary writ in this case, because there is no other plain, speedy, and adequate remedy through which LRGC's action in incorporating certain provisions of H.B. 148 into the Utah Code can be challenged. And, in particular, no other means exists through which the validity of LRGC's legal decision underlying its action – that these provisions are valid law by virtue of the H.B. 174 amendatory legislation, regardless of the H.B. 148 referendum – can be determined in a sufficiently timely and authoritative manner to permit the orderly conduct of the referendum.

Thus, for example, LRGC has stated its intent to address the interplay between H.B. 148 and H.B. 174, as it affects the referendum, in the impartial analysis it is required to issue by August 20 for inclusion in the voter guide. But, unlike the ballot title, there is no statutory provision that allows for a direct challenge in this Court to the impartial

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[50] Indeed, it can be argued that the proposed ballot title and the Utah Code as LRGC has prepared it for publication are inconsistent with each other, so that they cannot both be accurate. If the Code as LRGC has prepared it for publication accurately reflected the state of the law, then the only provisions subject to voter approval would be the sections of H.B. 148 labeled Title, Findings and Purpose, Definitions, Mitigation Monies, Enforcement and Penalties, and Limitation on Regulation of Private Schools, rather than the provisions of the Voucher Program described in LRGC's proposed ballot title.

analysis LRGC drafts, see Utah Code § 20A-7-703; and even if there were, a legal challenge in August or September would, for reasons already discussed, see supra p. 2, come far too late in the referendum campaign. And, while a declaratory judgment action might otherwise be an available option for clarifying the scope of the voucher referendum, the need for prompt and final determination of this issue renders impractical a procedure that would have to begin in the district court, only to be followed by an appeal to this Court.

It is also for that reason that the petition for an extraordinary writ is, under the circumstances, appropriately brought directly in this Court rather than in the district court. Cf. Walker v. Weber County, 973 P.2d 927, 929 (Utah 1998) (granting writ in the nature of mandamus as alternative to direct challenge to ballot title, and declining to require declaratory judgment action in district court, in view of imminent election).[51] There are no material issues of disputed fact that would prevent this Court from adjudicating the important and urgent issue presented here.[52] Cf. Carpenter v. Riverton City, 2004 UT 68, 103 P.3d 127 (declining to issue the writ where issues of disputed fact

[51] The time available before the November special election in this case is greater than the amount of time that remained before the election in Walker. But unlike Walker, this case involves a statewide referendum on an important and divisive issue of public policy, which will undoubtedly result in an extended and expensive campaign on both sides. As explained above, supra p. 2, important strategic decisions must be made soon, which cannot await a decision within a month or two of the election on whether the Voucher Program will take effect regardless of what happens in the referendum.

[52] Rather, what is likely to be disputed is the legal meaning to be given to the undisputed facts evidenced in the legislative record of H.B. 148 and H.B. 174. We note in addition that although we cite in this petition a number of newspaper accounts that provide relevant background information, we believe it unlikely that there will be any significant dispute about the factual matters discussed therein, and certainly not such as would affect this Court's ability to determine the legal issues raised by the petition.

could not be resolved in this Court). This Court should therefore take jurisdiction in order to decide the important and urgent issue presented.

VI. MEMORANDUM OF POINTS AND AUTHORITIES

H.B. 174 WAS INTENDED ONLY TO ENACT MINOR AMENDMENTS TO H.B. 148 AND CANNOT CREATE A VOUCHER PROGRAM THAT WOULD CONTINUE IN FORCE IF THE VOTERS REJECT H.B. 148

Petitioners contend that, under Utah law, the Voucher Program the Legislature sought to establish via H.B. 148 can be implemented only if H.B. 148 is approved by a vote of the people. Certain legislators and the Attorney General disagree. They contend that key provisions of H.B. 148 are unaffected by the referendum – that they will take effect and establish the Voucher Program as Utah law regardless of how the people vote in the referendum – because those provisions were repeated in the subsequent amendatory enactment of H.B. 174.

The factual situation created by the latter contention is surely unprecedented, but this Court does not lack the legal tools to address it. Multiple modes of analysis all lead to the same conclusion – that H.B. 174 does not have the effect of establishing a Voucher Program that can become law regardless of the referendum to which H.B. 148 is subject.

We begin with an examination of the purpose of H.B. 174, which establishes beyond doubt that the Legislature's intent in passing that bill was to make minor amendments to the Voucher Program it had adopted several weeks earlier through H.B. 148, and nothing more. Furthermore, relevant rules of statutory construction confirm that those amendments can have no vitality independent of the act they were amending. And,

by the same kind of analysis it would undertake in considering a question of severability, this Court should reject the independent viability of H.B. 174, inasmuch as that bill lacks the elements necessary to create an operable law and because the Legislature would not have enacted a Voucher Program that failed to include other sections of H.B. 148 that are not repeated in H.B. 174. Any other result would negate the clear intent of the tens of thousands of Utahns who signed the referendum petition against H.B. 148, and would fail to give effect to the people's constitutional right to reject a bill through the mechanism of a referendum.

A. The Legislature's Intent In Enacting H.B. 174 Was To Make Minor Changes In H.B. 148, And Not To Enact A Free-Standing Voucher Program

As this Court has often reiterated, its "primary goal" in interpreting statutes "is to give effect to the legislature's intent in light of the purpose the statut[es were] meant to achieve." Thurnwald v. A.E., 2007 UT 38 ¶ 42, 577 Utah Adv. Rep. 8 (quoting Evans v. State, 963 P.2d 177, 184 (Utah 1998)); see also State v. Martinez, 2002 UT 80, ¶ 8, 52 P.3d 1276 ("primary goal is to evince 'the true intent and purpose of the Legislature'" (quoting State ex. rel. Div. of Forestry, Fire & State Lands v. Tooele County, 2002 UT 8 ¶ 10, 44 P.3d 680). The contention of voucher proponents and the Attorney General that H.B. 174 enacted a Voucher Program that can be implemented independently and regardless of the outcome of the H.B. 148 referendum is flatly contradicted by the clear record of the Legislature's intent in passing H.B. 174.

We have reviewed the terms and the legislative history of H.B. 174 in some detail above. See supra pp. 12-18. The statements of both the sponsors of H.B. 174, and of

those legislators who voted for it despite their opposition to H.B. 148, make absolutely clear that the sole purpose of this piece of legislation was to make minor improvements in the original bill. And that conclusion is fully consistent with the bill's substantive content, which lacks many of the standard provisions, such as the statutory title, findings, statement of purpose, and definitions, normally included in a stand-alone bill.

It is also consistent with H.B. 174's short and long titles.[53] The short title of H.B. 174 ("Education Voucher Amendments") (emphasis added) is echoed by the long title, which explains that "[t]his bill modifies a program to award scholarships to students to attend a private school," and elaborates that the bill "modifies criteria for qualifying for a scholarship; modifies criteria for private schools to enroll scholarship students; modifies provisions relating to the State Board of Education; and modifies the review by the legislative auditor general" (emphasis added). Were H.B. 174 to be read as creating a stand-alone Voucher Program, rather than as simply amending or modifying the Program already established by H.B. 148, it would be open to the objection that its title had misled legislators, in violation of the requirement of Article VI, § 22 of the Utah Constitution that the subject of a bill "be clearly expressed in its title."

Equally important, the Legislature included a coordination clause in H.B. 174, which makes clear beyond doubt that H.B. 174's minor amendments were to be integrated into H.B. 148. The coordination clause provides that "[i]f this H.B. 174 and H.B. 148, Education Vouchers, both pass, it is the intent of the Legislature that the

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[53] This Court has held that a statute's title, even though not part of the statute, may be considered in interpreting the statute "if the language of the statute is ambiguous." Jenkins v. Percival, 962 P.2d 796, 800 (Utah 1998).

amendments to the sections in this bill supersede the amendments to the same numbered sections in H.B. 148 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication." H.B. 174, § 7 (Ex. 2, App. 23). The obvious purpose of this language was to ensure that, when the provisions of H.B. 148 and H.B. 174 were incorporated into the Utah Code, the amendments enacted by H.B. 174 would take the place of the original language in the same sections of H.B. 148. By its terms, the coordination clause instructs LRGC about how to integrate the language of H.B. 148 and H.B. 174 when "both" take effect. The clause does not state or imply any intent to create a Voucher Program that would stand on its own, without integration into and reliance on the previously enacted provisions of H.B. 148.

Nowhere in the legislative record can one find any support for the notion that the Legislature intended to create or thought it was creating through H.B. 174 a Voucher Program separate from H.B. 148. To the contrary, all of the evidence points to the same conclusion – that the Legislature's intent was merely to enact minor amendments to remedy several problems that had been identified in the Voucher Program established by H.B. 148.

Those taking the position that H.B. 174 can survive independently of H.B. 148 rely almost entirely on the fact that H.B. 174 was worded as "enacting" those sections of H.B. 148 to which it made amendments. But the legislative record makes quite clear that – as a matter of legislative intent – the only reason for the use of this language was the fact that the legislative provisions to which the amendments were being made had just been passed at the same session of the Legislature and had not yet been incorporated into

the Utah Code. See Utah Const. art. VI, § 25 ("no act shall take effect until sixty days after the adjournment of the session at which it is passed"). As H.B. 174's sponsor explained to his House colleagues, "because the new bill, the voucher bill, is not law yet, a lot of the language in this bill is underlined, but I am only changing a few words . . . ." [54] Rather than being a meaningful statement of legislative intent, the "enactment" language in H.B. 174 is an artifact of the short time period between the passage of H.B. 148 and H.B. 174 and the resultant fact that H.B. 148 had not yet been added to the Utah Code.

In short, a review of all available evidence about the Legislature's intent in enacting H.B. 174 allows only one conclusion – that it was the lawmakers' purpose merely to add minor amendments to the voucher legislation they had already adopted as H.B. 148, that H.B. 174's amendatory provisions repeating much of the language of H.B. 148 were to be coordinated with the language of that initial bill, and that there was no contemplation whatever that H.B. 174 would or could have any existence separate and apart from the bill it was enacted to amend.

B. Applicable Rules Of Statutory Construction Dictate That, As A Minor Amendment To Another Statute, H.B. 174 Must Fall Along With H.B. 148

Nor would there be any merit to an argument that, despite the Legislature's clear intent merely to enact minor amendments to the provisions of H.B. 148, the use of the "enacting" language in H.B. 174 nonetheless resulted – inadvertently – in the creation of

[54] Floor Statement by Bill Sponsor Rep. Last on H.B. 174, House Day 40 (Feb. 23, 2007) at 5 (Ex. 7, App. 170).

a separately enacted Voucher Program independent of that established by H.B. 148. Not only is any such contention belied by H.B. 174's coordination clause, but it is contrary to the principles of statutory construction embodied in Utah law.

The Utah law of statutory construction has in fact foreseen the situation in which the same provisions are enacted in two different statutes. Under these circumstances Utah law provides as follows:

> The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provisions, and not as a new enactment.

Utah Code § 68-3-6. As this provision – which surprisingly enough is not even mentioned in the Attorney General's opinion – makes plain, H.B. 174 cannot be considered a new and independent enactment, but rather, to the extent its terms are "the same as" those of H.B. 148, it is to be construed as a continuation of those provisions that are subject to the referendum.

Section 68-3-6 is the codification in Utah statutory law of a widely held principle of statutory construction. See 1A Norman J. Singer, Statutes and Statutory Construction § 22:33 (6th ed. 2002). And, as the Sutherland treatise further notes, it follows from this principle that "repeal [or, as here, rejection via referendum] of the original act repeals those provisions of the original act which were reenacted in the amendatory act." Id. § 22:39, at 430 (emphasis added).

This Court has applied § 68-3-6 in holding that legislative amendments that do not "alter the governing standard" of the underlying statute cannot survive a determination invalidating the underlying statute as unconstitutional. In re J.P., 648 P.2d 1364, 1370,

1378 n.14 (Utah 1982). Rather, the Court has put it, "[w]hen the trunk is uprooted, the branch engrafted upon it must also fall." Id. at 1378 n.14.[55] By the same token here, to the extent H.B. 148 is "uprooted" by the referendum, the H.B. 174 amendatory act – which did not alter the basic principle of a publicly funded private-school voucher program, but was adopted merely as a "clean-up" bill to make several minor changes in how that program would be implemented – must stand or fall along with it.

We note in this connection that the situation presented here is quite unlike that of cases in which a legislative body amends or repeals a law after it has been challenged by referendum. See Carpenter v. Riverton City, 2004 UT 68, 103 P.3d 127; Keigley v. Bench, 63 P.2d 262 (Utah 1936); Utah Power & Light Co. v. Ogden City, 79 P.2d 61 (Utah 1938). These cases typically turn on "whether the local government's purpose in revisiting a law that has been challenged by referendum is to evade that referendum," or, on the other hand, whether the purpose was to address the concerns that led to the referendum. Carpenter, 2004 UT 68, at ¶ 9. They do not address the question presented here, where the amendatory statute was not a response to the referendum but rather was adopted by the Legislature before the referendum process even began. Accordingly, the inquiry of these cases into whether the legislative body was acting in bad faith to thwart an already-approved referendum is inapt.[56]

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[55] Accord County Cork, Inc. v. Nebraska Liquor Control Comm'n, 550 N.W.2d 913, 916 (Neb. 1996) ("[W]hen an amendatory act uses language substantially similar to that found to be unenforceable and statutory changes were not made in response to the court's previous opinion, that statutory section will likewise be found unenforceable.").

[56] In addition, in these three cases it was either undisputed that the legislative body had entirely repealed the original law, thus nullifying the referendum, as in Carpenter and

And, while the Court thus need not inquire into whether there was any element of bad faith in the enactment of H.B. 174, it is clear beyond doubt that the Legislature's purpose was not to address the concerns that later led to the referendum. Unlike the situation in certain of the cases from other jurisdictions cited in Carpenter, it cannot be seriously suggested that the H.B. 148 referendum has been mooted by the enactment of an amended Voucher Program that is "essentially different" from the one created by H.B. 148 and challenged by the referendum, in which "the principal objectionable features complained of . . . have been removed." Ginsberg v. Kentucky Utils. Co., 83 S.W.2d 497, 501 (Ky. Ct. App. 1935); see also In re Megnella, 157 N.W. 991, 992 (Minn. 1916). The only significant substantive difference between the "H.B. 148 Voucher Program" and the "H.B. 174 Voucher Program" is (apart from the omission of certain essential provisions such as definitions) the absence of public-school mitigation monies in the latter – a change that, far from removing the Voucher Program's "objectionable features," only makes the Program worse from the point of view of the voucher opponents who initiated the referendum.

C. Application Of A Severability Analysis Also Makes Clear That H.B. 174 Cannot Stand On Its Own

That H.B. 174 does not create a Voucher Program independent of H.B. 148 can also be seen by applying the severability analysis this Court performs, after holding a portion of a statute to be constitutionally invalid, in order to determine whether the truncated remainder can continue in force independent of the unconstitutional provisions.

Keigley, or the question of the amendment's effect on the referendum was not considered because the amendment was also subject to referendum, as in Utah Power.

We agree, on this point, with the Attorney General's view that severability analysis is helpful in considering the question presented here.[57] Under this analysis, the relevant questions are whether the portion of H.B. 148 repeated in H.B. 174 – which the Attorney General contends could exist independent of H.B. 148 – is "'operable and still furthers the intended legislative purpose.'" Gallivan v. Walker, 2002 UT 89, ¶ 88, 54 P.3d 1069 (quoting State v. Lopes, 1999 UT 24, ¶ 19, 980 P.2d 191). Put another way, the "'test fundamentally is whether the Legislature would have passed the statute without the objectionable . . . part . . . .'" Id. (quoting Union Trust Co. v. Simmons, 211 P.2d 190, 193 (Utah 1949)). As we now show, notwithstanding the Attorney General's conclusory assertion to the contrary, the truncated portions of H.B. 148 that were repeated in H.B. 174 cannot survive either prong of this test.

1. H.B. 174 Is Not Operable Without The Provisions Contained Only In H.B. 148

In the first place, it is clear that the provisions of H.B. 148 that were repeated (and slightly amended) in H.B. 174 are not "operable" without the remainder of H.B. 148 for at least two reasons – because they lack information, such as key definitions, necessary to implement the Voucher Program, and because the Legislature did not appropriate money to fund H.B. 174 independent of H.B. 148.

a. H.B. 174 does not include six sections from H.B. 148, including notably the "Definitions" section. That section of H.B. 148 defines the key statutory terms "Board," "Eligible private school," "Income eligibility guideline," "Parent," "Scholarship student,"

[57] See Utah Attorney General's Opinion No. 07-002 (Mar. 27, 2007) at 4 (Ex. 9, App. 203).

and "Tuition," but in H.B. 174 these terms are undefined. Compare H.B. 148 § 53A-1a-803 (Ex. 1, App. 3), with H.B. 174 (Ex. 2, App. 14-23). All of these terms are necessary to the operation of the Voucher Program. While it might be possible to apply common understandings of several of these terms in ways that might or might not correspond to the Legislature's intent in enacting H.B. 148, others cannot be understood at all without reference to H.B. 148.

Thus, for example, the absence of any definition for "Income eligibility guideline" (defined in H.B. 148 as "the maximum annual income allowed to qualify for reduced price meals for the applicable household size as published by the U.S. Department of Agriculture by notice in the Federal Register," H.B. 148 § 53A-1a-803(3) (Ex. 1, App. 3)), would make it administratively impossible to implement the Voucher Program through the truncated provisions of H.B. 174 standing alone. H.B. 174 provides that students already enrolled in Utah private schools can qualify for vouchers if their parents had an income "less than or equal to 100% of the income eligibility guideline in the calendar year immediately preceding the school year for which a scholarship is sought." H.B. 174 § 53A-1a-804(2)(c)(iv) (Ex. 2, App. 15). And the sliding scale by which the amount of scholarships is to be determined is entirely dependent upon the "income eligibility guideline": if the annual income of a scholarship student's parents is less than or equal to 100% of the "income eligibility guideline," the scholarship student is to receive a maximum voucher of $3,000 a year, while those whose parents have incomes between 100% and 125% of the "income eligibility guideline" are to receive a maximum of $2,750, and so on. H.B. 174 § 53A-1a-806(4) (Ex. 2, App. 21). Without the ability to

look to the provisions of H.B. 148 for the meaning of this term, the agency charged with implementing the statute could not possibly determine the amounts of the vouchers it was directed to award or even, in some cases, which students were eligible to receive them.

b. A second reason why H.B. 174 is not "operable" if H.B. 148 does not take effect is because the Legislature has appropriated no funds to pay for vouchers under an H.B. 174 program. Only $100,000 in administrative costs has been appropriated for H.B. 174. Under the express terms of the Appropriations Bill, the $12.2 million appropriated for scholarships and mitigation monies is for H.B. 148. See S.B. 3, Appropriation Adjustments, Item 135 (Ex. 4, App. 55) (appropriating $12.2 million for scholarships and $100,000 for administration "to implement the provisions of Education Vouchers (House Bill 148, 2007 General Session)"). The money appropriated for H.B. 148 cannot simply be used to fund H.B. 174 instead, for the text of the Appropriations Bill specifies – by both bill number and title – that the $12.3 million is for H.B. 148.[58]

2. The Legislature Would Not Have Enacted A Voucher Law Without The Provisions Contained Only In H.B. 148

There are two reasons why the Legislature clearly would not have enacted a Voucher Program without the provisions that are found only in H.B. 148.

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[58] In support of the argument that the money appropriated for H.B. 148 could be transferred to fund a voucher program under H.B. 174, the Attorney General's opinion cites the Fiscal Note to H.B. 174, which states that, "Had H.B. 174 passed in absence of H.B. 148 or without a coordination clause, H.B. 174 would have had an estimated fiscal impact of $9.4M in FY 2008 and $12.5M in FY 2009." H.B. 174 Fiscal Note (Feb. 26, 2007), http://le.utah.gov/lfa/fnotes/2007/hb0174.fn.pdf. But the courts of Utah do not cite fiscal notes as legislative history, and in any event there is nothing whatever in the H.B. 174 fiscal note that in any way supports the suggestion that funds appropriated for one bill could be redirected to another.

a. The first is related to the missing definitions and appropriations just discussed. There can be no clearer expression of the absence of any legislative intent that H.B. 174 stand alone as a Voucher Program independent of H.B. 148 than the Legislature's failure to provide funding for any such free-standing program.

By the same token, it is inconceivable that, if the Legislature had intended to enact should a stand-alone program, it would have entrusted implementation of that program to an entity – the "Board" – that it nowhere defined in the allegedly stand-alone Voucher Program of H.B. 174. Throughout the statute, the "Board" is directed to take certain actions, ranging from awarding scholarships to approving private schools to writing regulations. But the text of H.B. 174 does not say what "Board" is to do this. Because H.B. 148 is "not in effect" pending the referendum, H.B. 148's designation of the "State Board of Education" as the "Board" assigned to enact the provisions of the voucher program, see H.B. 148 § 53A-1a-803(1) (Ex. 1, App. 3), cannot be looked to for that purpose. Thus, H.B. 174 as a stand-alone enactment does not specify who is to implement and administer the Voucher Program.

It is certainly true that, if H.B. 174 were unquestionably a valid statute and the question before the Court were how to interpret it, the Court would not be without clues – including notably the bill's appropriation of $100,000 to the State Board of Education – as to what the Legislature may have intended in conferring these powers on an unnamed "Board." But this objection misses the point. H.B. 174 is not before the Court for a determination of how to construe a valid statute, but rather for a determination of whether the Legislature would have enacted the truncated provisions of H.B. 174 as stand-alone

legislation. Given that question, it is very much to the point that, in what is claimed to be an independent, stand-alone bill, the Legislature did not provide a definition of the term that is key to the implementation of the entire statute. The only possible conclusion to be drawn from this omission is that the Legislature never contemplated that the "rump" provisions of H.B. 148 repeated in H.B. 174 were to stand alone without the rest of H.B. 148.[59]

b. Even apart from the fact that H.B. 174 is missing definitions and appropriations necessary to its implementation, it is clear that the Legislature would not have enacted a Voucher Program that contained only those portions of H.B. 148 that were repeated in H.B. 174. Most important, H.B. 174 does not include the section from H.B. 148 providing for the provision of mitigation monies to public schools that lose students because of the Voucher Program. As discussed above, the floor debate on H.B. 148, as well as other contemporaneous statements made by legislators, make clear that the mitigation monies section was essential to the passage of H.B. 148. The sponsor of H.B.

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[59] It also bears noting that, in addition to the missing appropriations and definitions, H.B. 174 lacks the statement of "findings and purpose" found in H.B. 148, which notably purports to declare that "any benefit to private schools, whether sectarian or secular, is indirect and incidental," H.B. 148 § 53A-1a-802(3) (Ex. 1, App. 2), that the Voucher Program is "enacted for [a] valid secular purpose," id. § 53A-1a-802(5)(a) (Ex. 1, App. 3), and that the Program is "neutral with respect to religion." id. § 53A-1a-802(5)(b). While we do not agree with the Legislature's apparent hope that such statements of "findings" could overcome the Voucher Program's obvious flaws under Utah's constitutional provisions governing separation of church and state, what is relevant here is the Legislature's apparent belief that such findings might help protect the Voucher Program against constitutional attack. That being the case, the Legislature's failure to include such "findings" in H.B. 174 is additional evidence that this bill was intended as nothing other than an amendment to, and an integral part of, the Voucher Program established by H.B. 148.

148 and other voucher proponents viewed this section as a political compromise necessary to secure the bill's narrow passage – by a single vote in the House. The Governor also made it clear that he would not have signed the bill absent that section. See supra p. 12. Indeed, the Attorney General's opinion also notes the importance of the mitigation monies section to the passage of H.B. 148.[60]

In short, if the relevant question is, as this Court has put it, "whether the Legislature would have passed the statute without the objectionable part," Gallivan, 2002 UT 89, at ¶ 88, the answer clearly is "no" – and as a result the truncated version of H.B. 148 that was repeated in H.B. 174 cannot stand on its own, independent of H.B. 148 and the referendum to which that bill is subject.

D. Allowing The Amended Sections Of H.B. 148 To Take Effect If The Referendum On That Bill Succeeds Would Undermine The Referendum Process And The Electorate's Intent To Disapprove The Voucher Program Adopted By The Legislature

The right of the people of Utah to pass legislation of their own crafting via initiative, or to reject via referendum statutes passed by their Legislature, is fundamental to the structure of government ordained by the Utah Constitution. Utah was the second state in the Union to add the right of initiative and referendum to its state Constitution, having done so in 1900. Initiative & Referendum Inst. v. Walker, 450 F.3d 1082, 1085 (10th Cir. 2006), cert. denied, 127 S. Ct. 1254 (2007). The Utah Constitution provides that the "Legislative power" of the state shall be vested both in the Senate and House of Representatives and in the "people of the State of Utah." Utah Const. art. VI § 1(1). The

[60] See Utah Attorney General's Opinion No. 07-002 (March 27, 2007) at 4 (Ex. 9, App. 203).

people are entitled to exercise their "Legislative power" by passing new laws via initiative, and by disapproving via referendum laws adopted by the Legislature.

This Court has emphasized that the "right of initiative is 'precious' and 'is one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter,'" Gallivan, 2002 UT 89, ¶ 27, and the same is true of the right of referendum. Thus, in assessing the import of a referendum, courts should interpret the measure "in such a manner as to give effect to the intent of the electorate." Arvin Union Sch. Dist. v. Ross, 221 Cal. Rptr. 721, 725 (Ct. App. 1985).

The statutory requirements for exercising the constitutional right of referendum are arduous: the referendum sponsors must gather signatures equal to 10% of the votes cast in the last gubernatorial election – nearly 92,000 this year – all within 40 days after the end of the legislative session in which the bill was adopted. Utah Code §§ 20A-7-301(1)(a), -306(1). The referendum drive on H.B. 148 was the first successful attempt to submit a law passed by the Legislature to a vote of the people since 1974, and it set a record for the number of verified signatures on a referendum petition.

Whatever legalistic arguments voucher proponents may muster in support of their contention that the Voucher Program should be implemented without regard to the outcome of the referendum – and, as we have shown above, these arguments are wholly without merit – no one can seriously suggest that the intent of the tens of thousands of Utahns signed the referendum petition in record-breaking numbers was simply to modify the Voucher Program established by H.B. 148 by removing the findings, definitions, provision for public-school mitigation monies, and enforcement provisions from H.B.

148. Their intent was, rather, to put to a vote of the people in toto the Voucher Program created by H.B. 148 (and subsequently amended by H.B. 174), and that is the issue that should be put before the electorate on November 6 – as the Governor, numerous legislators from both parties, and the public have urged[61] – in order "to preserve to the fullest tenable measure of spirit as well as letter,'" Gallivan, 2002 UT 89, ¶ 27, the people's constitutional right of referendum.

VII. CONCLUSION

For the reasons set forth above, this Court should hold that the November 6 referendum will determine whether the Voucher Program established by H.B. 148 – and subsequently amended by H.B. 174 – will be implemented, and that if the vote is "against" H.B. 148, no provisions of that bill shall become law notwithstanding their repetition in the amendatory H.B. 174. The Court should do so by (i) appropriately revising the ballot title proposed by LRGC; or (ii) in the alternative, issuing an extraordinary writ to restrain LRGC from incorporating into the Utah Code those

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[61] See, e.g., Governor Calls for Voucher Clarity (statement of Gov. Huntsman, May 26, 2007) (Utah electorate entitled to "up or down vote" on vouchers), http://www.utah.gov/governor/news/2007/news_05_26_07.html; Mel Brown & Kay McIff, Two Voucher Bills, One Big Mess, Salt Lake Tribune (May 12, 2007) (op-ed article advocating special legislative session to resolve the "mess" created by H.B. 174, and noting that "[e]ven voucher advocates should feel squeamish" about having the referendum derailed in this manner); Scott D. McCoy, The School Voucher Mess: How We Got Into It and How We Can Get Out, Salt Lake Tribune (April 28, 2007) (H.B. 148 referendum "should be properly interpreted as an up-or-down vote on whether the citizens of this state want a private-school voucher program funded by taxpayer dollars"); Jennifer Toomer-Cook & Bob Bernick Jr., Most Want Voucher Issue Simplified, Deseret Morning News (May 26, 2007) (reporting poll results that three-quarters of Utahns want the "two-voucher bill problem" "fixed").

provisions of H.B. 148 that were repeated in H.B. 174, unless and until H.B. 148 is approved in the November 6 vote of the people.

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I hereby certify that the foregoing Challenge to Ballot Title Or, In The Alternative, Petition For An Extraordinary Writ was served by hand delivery this 30th day of May, 2007 as follows:

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